



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

Address: COMMISSIONER FOR PATENTS

P.O. Box 1450

Alexandria, Virginia 22313-1450

www.uspto.gov

|   |             |                       |                     |                  |
|---|-------------|-----------------------|---------------------|------------------|
| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR  | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
| 10/527,264  | 09/08/2005  | Sam Robertson England | 03961.0059USWO      | 2910             |
| 23552 7590 04/06/2009<br>MERCHANT & GOULD PC<br>P.O. BOX 2903<br>MINNEAPOLIS, MN 55402-0903 |             |                       |                     |                  |
| EXAMINER  |             |                       |                     |                  |
| FETSUGA, ROBERT M   |             |                       |                     |                  |
| ART UNIT  |             | PAPER NUMBER          |                     |                  |
| 3751  |             |                       |                     |                  |
| MAIL DATE   |             | DELIVERY MODE         |                     |                  |
| 04/06/2009  |             | PAPER                 |                     |                  |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/527,264

**Applicant(s)**

ENGLAND, SAM ROBERTSON

**Examiner**

Robert M. Metsuga

**Art Unit**

3993

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 09 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 and 13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

1. The declaration filed February 09, 2009 is accepted. All pages of the declaration filed September 08, 2005 are stamped "08 SEP 2005".
2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: Proper antecedent basis for the "means to allow" set forth in claim 1, "regions" (both occurrences) set forth in claim 4, "fixing shaft" set forth in claims 6 and 10, subject matter set forth in claim 8, and "method" steps set forth in claim 9, could not be found in the specification. Applicant is reminded claim terminology in mechanical cases should appear in the descriptive portion of the specification by reference to the drawing(s).

Applicant argues at pages 8-9 of the response filed February 09, 2009, the language of claims 1, 4 and 9 finds "support" in the noted portions of the originally filed application. However, the argued "support" neither defines the claim language under consideration, nor is found in the descriptive portion of the specification. The objection has not been substantively addressed in the response. Applicant argues at page 8 of the response the language of claim 8 finds "support" at page 3, lines 20-24. The examiner has again

reviewed page 3, lines 20-24 of the specification. The claim language under consideration is not found at that location. The objection has not been substantively addressed in the response.

3. Claims 9 and 13 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 9 now recites "sequential steps". This subject matter is not found in the originally filed disclosure and is therefore considered to be new matter.

4. Claim 4 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The claim is unclear as to the double recitation of "regions" on line 2 thereof.

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1, 2 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Graziosi.

The Graziosi reference discloses a bracket assembly comprising: two bracket members 34,35; and means to allow fixing 36,46,47, as claimed. Re claim 9, the bracket members are fixed to the cistern 10 as clearly depicted in Fig. 1.

Applicant argues at pages 9-10 of the response Graziosi does not teach a bracket assembly that can mount an outlet valve to a cistern as recited in claims 1 and 9. This argument is considered moot since no such limitation is found in either of claims 1 or 9. However, it is noted that Graziosi indeed does disclose all structure defined by the ambiguously broad claim language (e.g. "means to allow fixing") as set forth supra.

7. Claims 1, 2 and 9 are rejected under 35 U.S.C. 102(b) as being anticipated by Grotewohl.

The Grotewohl reference discloses a bracket assembly comprising: two bracket members C1,C2; and means to allow fixing B2, as claimed.

Applicant argues at page 11 of the response Grotewohl does not teach a cistern outlet valve assembly. The examiner disagrees. As accurately noted by applicant, the Grotewohl bracket assembly is disclosed for use with a flush tank of a water closet (pg. 1 lns. 15-18). Applicant's argument is unpersuasive as lacking a factual basis. Applicant argues at pages 11-12 of the response Grotewohl does not teach "means to allow fixing". The examiner disagrees. The bracket members C1,C2 of the Grotewohl bracket assembly are fixed to a cistern A as clearly depicted in Figs. 1 and 2. Applicant's argument is unpersuasive as lacking a factual basis.

8. Claims 3-6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grotewohl and Erwin.

Although the bracket members of the Grotewohl bracket assembly do not include teeth, as claimed, attention is directed to the Erwin reference which discloses an analogous bracket assembly which further includes bracket members 12,14 having teeth 32. Therefore, in consideration of Erwin, it would have been obvious to one of ordinary skill in the bracket assembly

art to associate teeth with the Grotewohl bracket members in order to provide greater friction.

Applicant argues at page 12 of the response Grotewohl and Erwin are not properly combinable because Grotewohl discloses a cistern outlet valve bracket assembly and Erwin teaches an automobile exhaust system flange. The examiner agrees with applicant in that Grotewohl discloses a water closet flush tank pipe coupling, but disagrees in that the Erwin disclosure is limited to the automotive field. Erwin broadly teaches a flange structure to connect conduits (col. 1 lns. 9-13). One skilled in the art would be free to utilize the conduit connecting teachings of Erwin to improve the Grotewohl pipe coupling.

9. Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Grotewohl and Erwin as applied to claim 6 above, and further in view of Smith.

Although one of the bracket members of the Grotewohl bracket assembly does not include barbs, as claimed, attention is directed to the Smith reference which discloses an analogous bracket assembly which further includes a bracket member A having barbs a4. Therefore, in consideration of Smith, it would have been obvious to one of ordinary skill in the bracket assembly art to associate barbs with one of the Grotewohl bracket members in order to facilitate alignment.

Applicant argues at page 13 of the response Grotewohl, Erwin and Smith are not properly combinable for reasons analogous to those advanced with regard to Grotewohl and Erwin. The examiner disagrees with this argument for reasons similar to those advanced supra. Indeed, Smith is also directed to the field of pipe couplings.

10. Applicant is referred to MPEP 714.02 and 608.01(o) in responding to this Office action.

11. The grounds of rejection have been reconsidered in light of applicant's arguments, but are still deemed to be proper.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



12. Any inquiry concerning this communication should be directed to Robert M. Fetsuga at telephone number 571/272-4886 who can be most easily reached Monday through Thursday. The Office central fax number is 571/273-8300.

/Robert M. Fetsuga/  
Robert M. Fetsuga  
Primary Examiner  
Art Unit 3751